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NOTES OF THE WEEK

Capital Punishment

The fact that the Bill for the abolition of capital punishment, having passed the House of Commons by a small majority, was rejected by the House of Lords by a large majority, may be a matter of regret for the supporters of abolition, but the discussions have not been fruitless. If members of the public who have thought little about the subject have taken the trouble to follow the proceedings in both Houses, conducted in the atmosphere of calm and dignified debate, they will have cleared their minds of much of the emotionalism and prejudice that characterize a good deal of what has been said and written on both sides on this difficult problem.

No doubt the House of Lords was influenced by the weight of legal opinion, though this was not unanimous, and in particular by the view expressed by the Lord Chief Justice that if the death penalty for murder were abolished police and prison officers would feel that their greatest protection had been withdrawn. Supporters of abolition would say that experience in certain places where abolition has taken effect has not justified that fear, but if there is such a feeling in this country it is right that it should be brought out in debate.

The debates have had another satisfactory result. It seems likely that legislation designed to improve the law of murder will now be not long delayed. Both the Lord Chief Justice and the Archbishop of Canterbury made suggestions about this, and Lord Salisbury indicated a favourable attitude on behalf of the Government.

Pleas in Mitigation

Magistrates will take note of the observations of the Lord Chief Justice, when he addressed the annual conference of the Justices' Clerks' Society, upon the question of granting defence certificates and consequent expenditure of public money. These are evidently being granted freely, in many cases in which the prisoner has no kind of defence to put forward, and desires only to plead mitigating circumstances and to ask for leniency.

Lord Goddard made it clear that he was not referring to cases of a really grave character, but rather to those in which the prisoner could perfectly well say all that was necessary without legal assistance. Indeed, a statement from the mouth of the defendant himself might be of more value than such a statement made by counsel. His lordship described an instance in which, as he put it, he got the man to talk to him. The defendant made a statement about himself and what he had been doing, concluding by saying: "And if you ask Superintendent So-and-So he will tell you this is all true."

The superintendent was sent for and vouched for the truth of the prisoner's statement, with the result that the Lord Chief Justice was enabled to deal with the man with more leniency than could have been extended to him had he not made his plea in the way in which, with some encouragement, he did.

Learned counsel would have spoken with less hesitation and in better language than this unrepresented prisoner, but his speech, through no fault of his, might have had less effect than this simple statement coupled with a plea to the police for verification. If all that is to be said amounts to an avowal of regret and a plea for mercy on grounds best known to the defendant himself, it is quite likely that the right person to plead is the offender himself.

Glad to be Caught

There was good sense in the observation of a man who pleaded guilty at Hailsham to a charge of stealing that he was glad he had been caught, as "it stops you from doing it again."

The offender who is detected and brought before a court upon his first offence is likely to lose any idea he may have had that it was easy to do such things without getting found out, and in his case crime certainly has not paid. In all probability he has the humiliation of having his name in the press and loses for the time being his good reputation. This should be a deterrent against future lapses.

The man who is caught early is fortunate in this respect, that the court is far more likely to be able to extend leniency towards him if this is indeed his first and only offence, than it would be if he had to admit a large number of

offences, or if he had previous convictions. It is certainly true that to be caught first time is likely to be a good thing.

Custom of the Trade

It is no doubt an old custom, as was stated at the Bangor magistrates' court, for drivers of lorries delivering at public-houses to be given a drink "on the house." In the old days of horse-drawn brewers' drays there was little harm in it, for if the driver became sleepy and even a little the worse for drink the horses remained sober and usually knew enough to avoid danger of accident among the then slow-moving traffic—just as conductor and horses between them sometimes managed to bring the last omnibus to its destination if the driver was sleepy with drink and dozing most of the time.

But what mattered little 50 or 60 years ago will not do today, in these days of roads full of fast-moving traffic. In the case at Bangor, the defendant driver was said to have been employed by a bottling firm and to have been given drink, according to custom, at each of nine public-houses at which he made deliveries. He pleaded guilty to a charge of being under the influence of drink while driving his vehicle, and was fined and disqualified for two years.

The chairman of the bench, speaking on behalf of herself and her colleagues, described the custom in question as extremely dangerous and undesirable. We agree that if such a custom leads to excess, as it certainly may, it is time the old custom was discontinued. Many a good driver, whether of trade or private vehicle, makes it a rule not to take alcohol during driving hours.

Restitution and Punishment

To what extent the fact that stolen property has been returned or that restitution in some form has been made ought to affect the question of punishment is sometimes difficult to decide. If the offender has himself made good the loss he has inflicted, and done this before he was prosecuted, it may well tell in his favour, but if others have tried to come to his rescue by paying on his behalf, different considerations arise, although it is common for the fact that the prosecutor is not out of pocket to be pleaded in mitigation.

At Halifax quarter sessions a man was sent to prison for 18 months after pleading guilty to charges of stealing and forgery. He had been in the service of the Post Office, and the amount involved in all was about £150. Restitution had been made by his wife's mother who is reported as telling the court that this resulted from the sacrifice of practically the whole of her own and her husband's savings. The learned recorder said he had been slightly influenced by the restitution, which may perhaps be some little consolation to the elderly couple, but the mother-in-law is reported as saying that their sacrifice had been wasted. The recorder pointed out the seriousness of the offences of dishonesty by a man in a position of trust. There is no denying this. It is almost within living memory when Post Office servants guilty of dishonesty were almost invariably sent to penal servitude. Sentences are normally less severe today, but such offences are still rightly regarded as grave.

Smoking in Food Shops

The Food Hygiene Regulations are rightly receiving a good deal of publicity, and local authorities are devoting attention to the business of bringing them to the notice of shopkeepers and other traders, and as far as possible seeing that they are observed.

The Maidenhead Advertiser calls attention to a matter raised in an interview with Mr. F. G. Bishop, the chief sanitary inspector to the borough. Mr. Bishop recognizes the importance of the no-smoking regulation, which applies to those engaged in handling open food, but suggests that tradesmen are asking the pertinent question, "What about the customer?"

The shop assistant may be abstaining from smoking near food, but the customer not infrequently indulges his habit while looking over open food, possibly leaning over the counter where meat or fish is exposed. Another objectionable practice of some customers is that of handling, perhaps with unclean hands, food that is easily contaminated. The public needs to be educated about all this. Meanwhile, shopkeepers will no doubt do all they can to prevent customers from offending, if not against regulations, at least against cleanliness and hygiene.

Coach Drivers and Falling Luggage

It is seldom that we are in favour of increasing still further the number of regulations which those who govern us are constantly inflicting upon us, but it does appear that there may be good reason to consider making a regulation to protect passengers in public service vehicles from the dangerous consequences which may follow if the driver of such a vehicle is struck and incapacitated by a piece of luggage or some other article falling on him from a rack while he is driving.

Our readers will doubtless have read in the press about the tragic case of the six service men who were killed when a coach ran into a tree. It was said that a case fell from a rack on to the driver and rendered him unconscious. The jury at the inquest suggested that no rack suitable for the accommodation of luggage or other loose articles should be placed above the driver's head in a public service vehicle, and it seems to us that it should not be difficult to draft a simple regulation to this effect. If a vehicle moving at any speed has to stop at all abruptly loose objects are always liable to be thrown forward, and it is clearly desirable to try to ensure that there shall be no loose objects which, if they are so thrown forward or otherwise disturbed, can fall on the driver and render him incapable of controlling his vehicle.

The case to which we have referred will no doubt cause the responsible authorities to consider the desirability of introducing some such regulation.

Careless Car Owners

Publicity campaigns are very much in fashion these days, particularly those whose objects are to try to induce people to behave better on the roads. We do not know whether those who promote and direct these campaigns have any evidence to show whether their efforts are successful. If they are it might be a useful addition to include in these exhortations a request to car owners to take ordinary precautions to protect their own property. In a large number of police reports we read statements that the theft of cars, or of property which they contain, and the taking and driving away of cars is made all too easy because the owners will not take the trouble, when they leave their vehicles unattended, to shut the windows and lock the doors.

It is everyone's business to help in the due enforcement of the law, and the police are entitled to expect the public to do all that they can to assist in the prevention and detection of crime. The time of the police should not have to be wasted, or public money spent, on trying to persuade people to do what ordinary sensible people should do without being asked. We read in *The Birmingham Post* of June 26 that for a week in Staffordshire any motorist who leaves his unattended car unlocked may find on the driving seat, when he returns, a leaflet urging him to take more care. Last year in Staffordshire 556 thefts from cars were reported to the police and 331 vehicles were taken without the owners' consent. It is a safe assumption that in a large proportion of these cases the

vehicles were left unlocked and/or with windows open. We hope this effort on the part of the police will have some satisfactory result, but it is very much to be regretted that it is necessary for them so to spend their time and to spend public money on having leaflets specially printed, as presumably they must have done.

An Expensive Appeal

There is rightly no restriction on the right of a defendant, who thinks that he has been wrongly convicted in a magistrates' court, to appeal against his conviction. He does not have to ask for leave to appeal and he has not, as formerly he had, to enter into any recognizance for the due prosecution of his appeal. But this freedom to appeal can be abused, and it is proper, if quarter sessions on the hearing of an appeal comes to the conclusion, to quote a report of a recent case, " there was no merit in the appeal whatever," that public funds should not have to bear the whole burden of the cost of opposing the appeal. In the case in question the appeal was against a conviction for obstruction for which a fine of £2 had been imposed by the magistrates' court. The appeal was dismissed and the appellant had to pay his £2 fine plus £25 costs, plus (we presume) his own costs in bringing the appeal. This made a very expensive 25 minutes obstruction which was the period alleged in the charge.

A " False " Road Sign

According to a report in the *Brighton Evening Argus*, on July 4, there has been erected in Ferring Street, which is described as the principal entry into South Ferring, a " No through road " sign. Complaint has been made in the local parish council that this sign ought not to be there because Ferring Street is, in fact, a through road. The report states that the notice was put there, according to the chairman, to stop motorists getting into South Ferring and parking their cars outside residents' properties.

We know nothing, and express no opinion, about the merits of this matter from the point of view of the local considerations involved. But on the general question of the use of an authorized road sign to give to persons using the road information which is untrue we think there may be a good deal to be said. " No through road " should mean, as we understand it, that if traffic enters that road it cannot get out of it except by coming back to the point at which it entered. If this is not the meaning we do not appreciate what it is intended to convey. Section 46 of the Road Traffic Act, 1930, gives to the Minister of Transport and Civil Aviation power for certain reasons, and after public inquiry if he thinks fit, to prohibit or restrict the driving of vehicles, either generally or specially, on any specified road within the area of a council which applies for such an order. It can be argued that to erect a " no through road " sign at the entrance to a road which is in fact a through road is a method of seeking to prohibit or restrict the use of that road by vehicles without following the procedure laid down in s. 46. If this argument is sound the procedure seems to be a very questionable one.

Cars on the Forecourt

P.P. 5 at p. 353, *ante*, illustrates one aspect of the problem to which we referred in a Note of the Week at p. 356 and elsewhere, namely the ever increasing number of cars for which there is no fixed home. We have more than once advised that a householder cannot be prevented by any public authority from keeping a motor in his garden. Just possibly in some cases this might be contrary to a stipulation in his lease, and local authorities as landlords can prevent it. Again, the bringing of trade vehicles into the garden of a residence might in exceptional cases constitute development for which planning permission had to be obtained. As a rule however, this particular aspect of the problem where to put the car arises for the occupier who may own his own house or may be the tenant of a private landlord. In suburban streets the man who has no space beside his house to erect a garage is unable, equally, to put his car in the back garden even if he wants to do so. Most often hitherto he has left it in the street, sometimes in the carriageway (involving obstruction) or on the ornamental verge if one exists. But suppose he fears to do these things because action is being taken by the highway authority or the police. He is then quite likely, if he owns his house, to widen the front gate or to take down a section of the fence or wall. Most small suburban houses erected in the present century are set back far enough that a vehicle can stand on what was meant to be the open space in front. In some towns the same is true of streets of semi-detached or terraced houses erected even earlier. We have been told of a county borough where the dwarf wall or fence in front of house after house has been removed throughout a group of Victorian streets, so that the householder (presumably in many houses an owner-occupier) can drive his car on to the paved open space belonging to the house. From the local authority's point of view this is objectionable, since it involves driving the car across the pavement at a place where there is no properly constructed crossing.

Sooner or later this must damage the curb and the surface of the footway, especially where the latter is asphalted or gravelled. The decisions in *St. Mary, Newington* v. *Jacobs* (1871) 36 J.P. 119, and other cases ending with *Marshall* v. *Blackpool Corporation* (1935) 98 J.P. 376 show, however, that crossing the footpath in this way cannot be prevented in most cases. Section 18 of the Public Health Acts Amendment Act, 1907, is no help.

From the point of view of amenity the results are at least untidy, and the local authority might prefer that the cars on the open spaces in private occupation should be covered, even though they cannot insist that the openings in the front walls or fences shall be properly made and neatly finished. The owner of the car is likely to cover it, if he can, and there are plenty of portable or nearly portable garages now advertised. Is one of these things caught by the statutes mentioned in our above-cited answer ? In many cases it seems to be caught by the normal building byelaws, which forbid a building constructed for use as a garage on the open space in front of a domestic building intended to be used wholly or partly for human habitation (*see* model byelaws 9 and 78). Whichever way this aspect of the problem of keeping a car is considered, difficulties arise and there is no evident solution.

The Tower

So the projected tower in Battersea Park has remained a project, thanks to the Chancellor of the Exchequer, who put his foot down after we had gone to press last week, and after the Minister of Housing and Local Government had declared himself unable to stop the project in the exercise of a jurisdiction conferred upon him by the Town and Country Planning Act, 1947. Different aspects of the project provided good controversial reading; Mr. T. S. Eliot condemned it as an ignominious and monstrous folly, while the leader of the London county council retorted in *The Times* that it was designed for the pleasure of the masses—thus adroitly branding his opponents as high class enemies of popular enjoyment, and skilfully avoiding the question whether the populace would enjoy the fun fair less, if not given the opportunity of looking over the Park

from a platform 160 *ft.* above the surface. The Minister of Housing and Local Government in the House of Commons, and Lord Munster in the House of Lords, gave opponents of the tower an answer which if technically sound was unconvincing. They said that a piece of Battersea Park had already been diverted for use as a fun fair, by legislation for which the Labour Party was responsible. The Minister might regret this; in fact he did regret it, but the harm was done. For a fun fair, a look-out tower was an apposite feature, and it would therefore have been a misuse of planning powers to prevent it, when the objection to it was the economic condition of the country. This defence of ministerial inaction shows how far planning has been pushed back from the grandiose conceptions of its advocates a dozen years ago, and it failed to satisfy opponents, who were asking in non-technical language what was the use of handling major planning questions at governmental instead of local level, if the Government held itself unable to take into account national considerations. Politics came into this; it is an interesting reflection, that the opponents of the tower have largely been opponents also of planning: people who upon principle dislike central intervention in local affairs, and object to interference by public authority with a person's use of his own property. In this instance they would have been ready to accept a central exercise of planning power, overruling the London county council.

Apart from aesthetic and more or less political objections to the tower, and apart from those people who support the county council on political grounds or for reasons of prestige, we doubt whether ordinary members of the public were disturbed at the beginning of the project or have shed tears over its postponement. The many who, according to the ochlocratic doctrine of the county council's spokesman, prefer a fun fair to a park, have done without the tower so far, and can do without it until times improve. In a year when housing and highways, improved prisons and improved sewerage and water supplies, all have to be slowed down, an item of £150,000 for an object of no practical utility beyond adding to the earning capacity of a fun fair) may well seem, to people who look at it impartially, an item of expenditure which would have been out of accord with present national policy, and an item which it was right to stop. The leader of the county council said in his letter to *The Times* that " it must surely be wrong that either the L.C.C. or the Minister should attempt to enforce an economic control not conferred by the planning Acts." This would have been correct on the council's part, if acting as planning authority, because of *vires*, but to our mind the strangest feature of the case is that the Minister of Housing and Local Government declared himself to have acted on the view that, because his consent had become necessary under a statute of limited application, he was precluded from paying regard to the policy of the Government of which he is a member. This seems very like throwing over, in deference to a powerful interest, the constitutional principle of collective Government responsibility.

Expenditure on Public Social Services

The effects of the silent revolution of the last half century are clearly shown in a note in the Ministry of Labour Gazette for June last, citing from tables prepared by the Central Statistical Office figures of expenditure for 1955–56 on social services in Great Britain by the central Government, the national insurance funds and the local authorities, with comparative figures for earlier years.

These are the 1955–56 figures:

	£ *millions*
National insurance schemes	664
Non-contributory old age pensions	18
National assistance	120
War and other service disability, etc., pensions	88
Family allowances	109
Industrial rehabilitation, training and employment of the disabled	3
Nutrition services	89
Education	488
Child care	19
National health service	542
Other health services	15
Housing	99
Total expenditure	£2,254

Expenditure on national insurance schemes consists of the expenditure of the National Insurance Fund and the National Insurance (Industrial Injuries) Fund, and includes retirement pensions, other widows' benefits, sickness, death, maternity, industrial injuries and unemployment benefits. By comparison the estimated expenditure included in the National Budget for 1956–57 can be summarized:

	£ *millions*
Interest and management of the National Debt	670
Other Consolidated Fund items	108
	778
Defence	1,499
Education and Broadcasting	414
Health, Housing and Local Government	729
Pensions, National Insurance and National Assistance	456
Other Civil items	862
	£4,738

Expenditure by local authorities, after crediting government grants, is about one tenth of the National Budget total.

Measured in money terms total expenditure on the social services has increased by 50 *per cent.* in the seven years ended on March 31, 1956, and forms, as the Budget summary indicates, a very important section of central and local government expenditure: this expenditure for 1955–56 represents 32 *per cent.* of all personal incomes. Such a high percentage emphasizes the vital necessity of high productivity and external solvency as necessary conditions to the continuance of the benefits of the welfare state.

DEPOSITIONS OF PERSONS DANGEROUSLY ILL

By R. H. HARBOUR, *Clerk to the Justices, Yeovil and Crewkerne*

(*Concluded from p.* 439, *ante*)

Depositions under s. 41 of the Magistrates' Courts Act, 1952.

This section, which is derived from provisions formerly contained in s. 6 of the Criminal Law Amendment Act, 1867, contains a new provision which now permits the use before examining justices either for the prosecution or for the defence of a deposition taken in accordance with the provisions of the section; previously it was admissible only on the trial of an accused on indictment. Section 41 must be read in conjunction with r. 29 of the Magistrates' Courts Rules, 1952.

The difficulties that may easily arise in invoking the provisions of s. 41 are not diminished where a decision as to its appropriateness has to be made in circumstances of real urgency. Strict compliance with the directions of the section and of the conjunctive r. 29 is essential if trouble is to be avoided.

The section enacts:

" (1) Where a person appears to a justice of the peace to be able and willing to give material information relating to an indictable offence or to any person accused of an indictable offence, and—

(*a*) the justice is satisfied, on a representation made by a duly qualified medical practitioner, that the person able and willing to make the statement is dangerously ill and unlikely to recover; and

(*b*) it is not practicable for examining justices to take the evidence of the sick person in accordance with the provisions of this Act and the rules,

the justices may take in writing the deposition of the sick person on oath.

(2) A deposition taken under this section may be given in evidence before examining justices inquiring into an information against the offender or in respect of the offence to which the deposition relates, but subject to the same conditions as apply, under s. 6 of the Criminal Law Amendment Act, 1867, to its being given in evidence upon the trial of the offender or offence."

Rule 29 of the rules of 1952 provides:

(1) A justice of the peace taking the deposition of a person under s. 41 of the Act shall give the person, whether prosecutor or accused, against whom it is proposed to use it reasonable notice of the intention to take the deposition, and shall give that person or his counsel or solicitor full opportunity of cross-examining the deponent.

(2) The justice shall sign the deposition and add to it a statement of his reason for taking it, the day when, and the place where, it was taken and the names of any persons present when it was taken.

(3) The justice shall send the deposition, with the statement—

(*a*) if it relates to an offence for which a person has been committed for trial, to the proper officer of the court for trial before which the accused has been committed;

(*b*) in any other case, to the clerk to the examining justices before whom proceedings are pending in respect of the offence, or, if no such proceedings are pending, to the clerk of the peace for the county or borough in which the deposition was taken.

The conditions referred to in s. 6 of the Act of 1867, compliance with which is precedent to the admissibility of the deposition at the trial or before the examining justices, are:

(*a*) that the person who made the deposition is dead, or that there is no reasonable probability that such person will ever be able to travel or to give evidence;

(*b*) that the deposition is signed by the justice by or before whom it was taken;

(*c*) that reasonable notice of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person, or his counsel or attorney, had or might have had if he had chosen to be present, full opportunity of cross-examining the person who made the deposition.

The notice referred to must be in writing, otherwise the deposition cannot be read although the person against whom it is proposed to be used in evidence was present when it was taken and had full opportunity of cross-examination; *R.* v. *Shurmer* (1886) 50 J.P. 743; *R.* v. *Harris* (1918) 82 J.P. 196. The requirement as to the service of the written notice overrides the whole section and no deposition purporting to be made under the section can be admitted unless the notice has been given. In certain circumstances the statement may, however, be admissible as a dying declaration; in *R.* v. *Quigley* (1868) 18 L.T. (N.S.) 211 a statement purporting to be made under s. 6 of the Act of 1867, but made in the absence of the accused who had not been served with a notice and who could not then be found, was admitted as a dying declaration.

It will be observed that whilst s. 6 of the Act of 1867 is silent as to who shall give the notice, r. 29 (1) of the rules of 1952 requires that it shall be given by the justice taking the deposition. The form of notice, however, given in the precedents in *Stone* (87th edn., p. 2,540) and in *Oke's Magisterial Formulist* (14th edn., p. 25) both provide for the notice to be signed by the clerk to the justices or the prosecutor, etc. In view of the wording of r. 29 (1) we would suggest, *ex abundanti cautela*, that the notice be signed by the justice.

Care should be taken to ensure that the caption to the deposition is in order and that it contains all the particulars required by r. 29 (2). In *R.* v. *Curtis* (1904) 21 T.L.R. 87, Bigham, J., refused to admit a deposition taken under s. 6 of the Act of 1867 because the caption did not state where it was taken.

The factors that are requisite for the taking of a deposition under s. 41 are those contained in subs. (1) (a) and (b), *supra*. With regard to para. (b), it will be observed that the justice must be satisfied that it is not "practicable" to take the deposition under the other provisions of the Act. It may be noted that s. 6 of the Act of 1867 (from which s. 41 of the Act of 1952 is derived) contained in the preamble the phrase "practicable or permissible," but s. 41 uses only the word "practicable," and having regard to *R.* v. *Bros*, *supra*, we think this must be taken to mean something more than the fact that it may not be convenient to take the deposition under the other provisions of the Act. Cases in which s. 41 would have to be invoked would include those where the witness was lying in a place outside the jurisdiction of the examining justice acting for the place where the committal proceedings were taking place, or where, say, the accused had already been committed for trial and the object of the deposition was to record the testimony for the purposes of the trial. The section is difficult, and a decision to invoke its provisions should not lightly be taken. We suggest a safe rule is first to apply one's mind to the question whether it is practicable to take the deposition under the other provisions of the Act of 1952. If so, then it cannot be taken under s. 41.

Where a deposition has to be taken under s. 41 and the accused is in custody, an order in writing may be issued under s. 7 of the Criminal Law Amendment Act, 1867, directed to the prison governor requiring the accused to be conveyed to the place mentioned in the notice served upon him for the purpose of enabling him to be present when the deposition is taken. The order may be signed by the Judge or justice by whom the accused was committed, or by the visiting justices of the prison. A form of the order is given in precedent No. 61 on p. 26 of *Oke* (14th edn.).

The points to note when considering the question of taking a deposition under s. 41 may be summarized as follows: (1) the circumstances must be such that it is not practicable to take the deposition in accordance with the other provisions of the Act; (2) it must appear to the justice that the person is able and willing to give material information relating to an indictable offence or to any person accused of an indictable offence; (3) the justice must be satisfied on a representation made by a duly qualified medical practitioner (there is no requirement that it shall be made orally) that the person is dangerously ill and unlikely to recover; (4) reasonable notice in writing of the intention to take the deposition (giving particulars of the place, time, etc.) must be given to the person against whom it is proposed to use the deposition, and the desirability of that person being legally represented should be considered; (5) the person on whom the notice is served or his counsel or solicitor must be given full opportunity of cross-examining the deponent; (6) the deposition must be signed by the justice and the caption properly completed with a statement of the justice's reason for taking the deposition, the day when, and the place where, it was taken and the names of any persons present when it was taken; (7) the deposition must be disposed of in accordance with the requirements of r. 29 (3) of the rules of 1952.

Children and Young Persons Act, 1933.

Section 42 (1) of this Act extends the power to take a deposition in the case of a child or young person, and provides that where a justice is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court of any child or young person in respect of whom any of the offences mentioned in sch. I to the Act is alleged to have been committed would involve serious danger to his life or health, the justice may take in writing the deposition of the child or young person on oath, and shall thereupon subscribe the deposition and add thereto a statement of his reason for taking it and of the day when and place where it was taken, and of the names of the persons (if any) present at the taking thereof. Subsection (2) prescribes the method of disposal of the deposition. The section, which applies to the offences (indictable and summary) mentioned in sch. I, must be read in conjunction with s. 43.

Section 43 prescribes the conditions subject to which the deposition will be admissible in evidence in the proceedings before the court. The section contains a proviso requiring that the accused shall have been served with reasonable notice of the intention to take the deposition and that he or his counsel or solicitor had, or might have had if he had chosen to be present, an opportunity of cross-examining the child or young person making the deposition.

Dying Declarations.

These are not governed by any statutory authority but are sanctioned by the common law. They are admissible in trials for murder and manslaughter, where the death of the declarant is the subject of the charge, and the circumstances of the death the subject of the declaration: *R.* v. *Mead* (1824) 2 B. & C. 605. In order to be admissible it must be shewn that at the time the statement was made the death of the declarant was imminent and that he had abandoned all hope of living, *i.e.*, he believed that death must follow. But it is not necessary that the declarant believed that death would ensue immediately: *R.* v. *Perry* (1909) 73 J.P. 456. It is desirable that a statement of the declarant's belief in his impending death should form part of the declaration, otherwise evidence must be forthcoming that the declarant had abandoned all hope of living. The declaration is not admissible unless the declarant would have been competent as a witness, if living, and was mentally capable of appreciating his condition. Imbecility or tender age may exclude the declaration: *R.* v. *Pike* (1829) 3 C. & P. 598. The dying declarations of a boy of 10 years old have been held admissible; *R.* v. *Perkins* (1840) 9 C. & P. 395. Those of a child of four have been held not so: *R.* v. *Pike*, *supra*. It is not necessary that the declaration shall be made in the presence of an accused person. The declaration should be written down in the declarant's own words, read over to him, and signed by him where that is possible. If questions are put to the declarant the questions and the answers should be written down verbatim and should form part of the declaration. The declaration is not taken on oath. It need not necessarily be taken by a justice although this course is advisable. The declaration need not be in any particular form, but a suggested form appears in precedent No. 6 on p. 3 of *Oke* (14th edn.). It should be dated and signed by the person taking it and by any others present who heard the declarant make it. The declaration may be produced as an exhibit in commital proceedings by any person present at the time it was taken.

Forms.

It will be found expedient to maintain in complete readiness a file containing all the forms in blank referred to in this article, a supply of stationery, copies of the New and Old Testaments, and notes on procedure. If action has to be taken under s. 41 of the Act of 1952, one of the forms first required will be the notice of intention to take the deposition, and possibly the order to the prison governor to convey the prisoner to the place where the deposition is to be taken. Valuable time will be lost if these forms have to be typed *de novo*; the necessary details can quickly be inserted if they are kept in blank form. A difficulty in this particular branch of magisterial practice is that the need for action seldom arises, although the possibility of it arising is ever present. When the call comes some quick refreshing of the memory may be necessary, and it is hoped that in this respect these notes may prove to be of some value.

LOCAL AUTHORITY BORROWING NOW

Propaganda and an increasing accumulation of unpalatable facts are combining to drive home the unpleasant and painful conclusion that Mr. Micawber was right, equally for countries as for individuals; and while there are wide divergences of view as to orders of priority within the means available, for instance it is by no means common ground that the making of new roads should be preferred to the production of beer or television sets, there is agreement in theory at any rate that the nation as a whole should not spend more than it earns.

As local authorities dispose of such a considerable part of the national income their actions and commitments obviously have an important bearing on the national economy and the achievement of solvency. Their expenditure on revenue account is very largely the expression of national policy and cannot be substantially reduced while that policy remains unchanged: capital expenditure is obviously more flexible, however, as new projects of certain kinds can be limited and programmes contracted should national needs demand it. In this connexion the relative importance of local authority capital expenditure is not always realized, even in local government circles. These figures, taken from tables quoted by Mr. Paul Bareau in his address to the conference of the Institute of Municipal Treasurers and Accountants held in June last, make the position clear:

Year	*Capital Expenditure by Local Authorities*	*Total U.K. Investment*	*Ratio of 1:2 per cent.*
	£	£	
1950	412	1911	21·5
1951	463	2075	22·3
1952	542	2356	23·0
1953	606	2607	23·2
1954	576	2806	20·5
1955	497	3017	16·4

It is also important to appreciate that on the basis of loans sanctioned two-thirds of all such capital expenditure is in respect of housing, 15 *per cent.* is on education and the rest individually insignificant.

The Government have the earliest and most comprehensive information about the state of the nation's finances and, in the light of that knowledge, we feel that more help and guidance

could have been given to local authorities in deciding future action in the national interest. In fact, what has been done amounts to a "severe restraint," to use the words of the Chancellor of the Exchequer, on the grant of loan sanctions for works which are comparatively unimportant, *i.e.*, those other than housing and education; to controlling the programme of starts on education because the 1955/56 capital programmes are seriously in arrears—in other words the changes here affect only timing; and to leaving local authorities to determine their own policy in the outstandingly important field of housing.

On housing account the combined effect of higher interest rates and reduction of subsidies is certainly drastic in relation to rent levels, as the comparative figures below make evident:

Rate of Interest Assumed Capital Cost	3¾ *per cent.* £1,800	5½ *per cent.* £1,800	
		General Needs	*Slum Clearance*
	£	£	£
Loan Charges	76	103	103
Management, Maintenance, etc.	15	15	15
	91	118	118
	£		
Less Subsidies:			
Exchequer .. 22		10	22
Rates 7	29		
Net Annual Rental .. .. (exclusive of Rates)	62	108	96
Weekly equivalent	23*s.* 10*d.*	41*s.* 6*d.*	36*s.* 11*d.*

The view of the Government, as expressed in the debate on the third reading of the Housing Subsidies Bill in February last, was that pooling of all council house rents by each housing authority would mean that the reduction of subsidies and increased interest charges would have no serious effects. The Minister of Housing and Local Government said that figures of increase of the order of 14*s.*, 15*s.*, and 16*s.* which were quoted in the debate merely expressed the additional cost of new dwellings on the assumption that the subsidies on existing dwellings were not pooled, but that with pooling, the annual increase in the average weekly rent should amount to no more than 8*d.* and then quoted a number of examples of which Manchester was lowest with an increase of 5*d.* and Southampton highest with an average rise of 1*s.* 1*d.*

Thus we have the somewhat odd situation that there is physical control over a third of local capital expenditure and none over the remaining two-thirds; there seems no clear indication of the number of new houses the Government would like built for general needs but presumably it is expected that increased costs and higher interest will slow down construction and the overall total show a reduction from peak levels.

So far as expenditure does go on, the Government are prepared to accept for grant revenue contributions to capital outlay within certain fairly narrow limits, and indeed on education the Minister is now prepared to admit for grant expenditure of this kind on any capital project whose cost does not exceed £10,000 up to a total not exceeding the product of a threepenny rate: a substantial increase over the former limit.

But by far the greater part of capital expenditure must be met by loan. Resort to the Public Works Loans Board has now been denied or made more difficult and the system inaugurated by which local authorities have been forced on to the money market. This change was welcomed by certain people, including some local authority representatives, as an important new local freedom, the words of the Local Government Manpower Committee about local independence being quoted with somewhat unctuous approval.

We wonder what they think about freedom now with interest rates on mortgage loans at the time of writing reaching these figures:

2–5 years	6 *per cent.*
6–9 years	5⅞ *per cent.*
10–14 years	5¾ *per cent.*
15–20 years	5⅝ *per cent.*
Over 20 years	5⅜–5½ *per cent.*

By comparison the yields on government stocks at the same time are:

3 *per cent.* Exchequer	1960	4⅛ *per cent.*
2½ *per cent.* Exchequer	1963–64	4–15/16 *per cent.*
4½ *per cent.* Electricity	1967–69	5–7/16 *per cent.*
4 *per cent.* Transport	1972–77	5–3/16 *per cent.*
3 *per cent.* Transport	1978–88	5 *per cent.*

The only conclusion to be drawn from these rates is that local authorities are being made to pay heavily by lenders who are taking advantage of their strong position. Those authorities who can make stock issues are somewhat better placed, for example the redemption yields on the recent public issue by the City of Plymouth of £3 million at 5½ *per cent.* redeemable 1964–65 and on the private placing by the County of Warwick of £1 million at the same rate of interest and for the same period are respectively £5 7*s.* 10*d.* and £5 9*s.* 11*d.*, which compare very closely when allowance is made for the greater expenses of a public issue. Not all local authorities can use this method of borrowing, however, and in spite of vague reassurances about the availability of Public Works Loans Board funds a great deal of business has had perforce to be done in the mortgage market at the high rates quoted.

The supply of money in this market is judged by some inadequate to meet the demand: if this be true it may mean even higher interest rates and the Public Works Loans Board again bringing its own rates into line with a scarcity premium which government action has in fact caused.

We do not dispute the inflationary effect of the former practice of the Board, whereby long term local capital requirements were financed by short-term Treasury bills which being held by the banks formed the base for multiplied increases in the quantity of money in circulation : it seems right to us that capital requirements should be financed by genuine savings and not by inflationary book-keeping exercises. What we do not understand, however, is the objection to financing the Board by something like the old Local Loans Stock, issued for a suitable term and at the prevailing rate of interest on government securities, local authorities to be given the opportunity of drawing their capital from the Board if they so wish. Surely it must be better for public funds, or in other words the taxpayer and ratepayer, that there should be concerted action by borrowers instead of the present lamentable free-for-all where lenders crack the whip and the weaker brethren among the local authorities, quite understandably a little fearful of their cash position, agree to pay higher rates than the general situation justifies. No inflation is caused by raising required capital in one operation instead of in small and expensive fragments. Even if the Government are not prepared to fix a figure of the total capital which can be expended by local authorities our suggestion that the Board should resume an important place in the financing of local authority capital expenditure, thus eliminating much of the unnecessary and extravagant competition for money between local authorities, is in no way invalidated.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Ormerod and Donovan, JJ.)

June 28, 1956

R. *v.* CORNWALL QUARTER SESSIONS APPEAL COMMITTEE. *Ex parte* KERLEY

Food and Drugs—Meat—Carcase condemned by justice as unsound—No appeal to quarter sessions—Food and Drugs Act, 1938 (1 *and* 2 *Geo.* 6, *c.* 56), *s.* 10 (3), *s.* 88.

MOTION for order of prohibition.

Carcases of meat belonging to one Richard Peter Montague Whittington were seized and brought before a justice of the peace for the county of Cornwall under s. 10 (1) of the Food and Drugs Act, 1938, by the applicant Kerley, a duly authorized officer of the Cornwall county council, on the ground that they were unfit for human consumption, and the justice, under s. 10 (3), condemned the carcases and ordered them to be destroyed. Whittington gave notice of appeal to Cornwall quarter sessions against the justice's order, and the applicant obtained leave to apply for an order of prohibition to prohibit the appeal committee of the quarter sessions from hearing the appeal, on the ground that no appeal lay.

Held, that in this matter the justice was acting administratively and not as a court of summary jurisdiction, and that, accordingly, no appeal lay under s. 88 of the Act of 1938, the owner not being "a person aggrieved by an order . . . of a court of summary jurisdiction." The order for prohibition must, therefore, issue.

Counsel: *Skelhorn, Q.C.*, and *Mildon* for the applicant; *Edmund Davies, Q.C.* and *Worsley* for the owner of the carcases.

Solicitors: *Robbins, Olivey & Lake*, for *Stephens & Scown*, St. Austell; *Champion & Co.*, for *Spencer, Gibson & Son*, Sutton, Surrey.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

BASSETT *v.* EVANS

Mine—Coal mine—Apparatus producing flame—Oxyacetylene burner taken below ground without authority—Absence of manager on leave—Under-manager appointed to act—Liability of manager—Coal Mines Act, 1911 (1 *and* 2 *Geo.* 5, *c.* 50), *s.* 3 (2) (*a*), *s.* 35 (1).

CASE STATED by Port Talbot justices.

At Port Talbot magistrates' court an information was preferred by the respondent, Thomas John Evans, alleging that the appellant, William Bassett, was, on June 27, 1955, the manager of the Glennafod mine, Glamorganshire, and that there was on that day a contravention of s. 35 (1) of the Coal Mines Act, 1911, as amended by art. II of the Coal Mines (Lighting and Contraband) General Regulations, 1949, in that in the mine, in which safety lamps were required, a person had in his possession an article prohibited under that sub-section and capable of producing a flame, namely, an oxyacetylene burner, such burner not having been authorized to be taken below ground by the Act or by the Minister of Fuel and Power or by the inspector of the division.

On the morning of June 27, 1955, the burner was being used at a point 10 or 12 *yds.* inside the entrance to the mine for the purpose of carrying out a process known as burning out rings. The mine was one in which safety lamps were required and no application for permission to use the burner had been made to the persons competent to grant such permission, and no safety precautions were carried out during the operation. The appellant was away on leave when the operation was performed, and, in accordance with s. 3 (2) (*a*) of the Act, he had appointed the under-manager to act in his absence. On June 24 the appellant had given oral instructions for certain work to be carried out at the entrance to the colliery, in the course of which he said: "We will pull these half rings out and then those that are in the cement I will have burnt out." The justices were of opinion that the appellant had failed to give instructions to his workmen on June 24, 1955, with sufficient clarity, and that this was the initial cause of the contravention of the Act. They held that in the circumstances the appellant was guilty of a breach of s. 75 and convicted and fined him. The appellant appealed.

Held, that (i) if a manager for any of the reasons in s. 3 (2) is unable to act and properly appoints another person, he ceases to be clothed with the responsibility which a manager has under the Act, and that the person who, having been properly appointed, is *de facto* the manager is the person liable to be convicted under s. 75, and, therefore, that the appellant was not liable; (ii) even if in law the appellant were liable as manager, he had on the evidence amply discharged the duty laid on him by s. 75, and the justices had no reason for finding otherwise. The appeal must, therefore, be allowed and the conviction quashed.

Counsel: *Edmund Davies, Q.C.* and *Alun T. Davies* for the appellant; *Rodger Winn* for the Crown.

Solicitors: *Sharpe, Pritchard & Co.*, for *T. D. Windsor Williams*, Neath; *Treasury Solicitor.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

CITY OF LONDON WEIGHTS AND MEASURES DEPARTMENT

The importance of the work of this department cannot be judged by the size of the area which it covers. The City of London is often referred to as the square mile, but in that square mile a vast amount of business is transacted, quite apart from several important markets which it contains. The fees received by the department during 1955 amounted to nearly £10,000.

As in other areas, the functions of weights and measures inspectors are regarded primarily as preventive and as a protection and assistance to traders no less than to customers. In his annual report Mr. Desmond Allchin, chief inspector to the City of London, says he is proud to report that during the year 1955 it was not found necessary to institute proceedings of any kind. He considers the satisfactory state of affairs evidence of both the honesty in city trading and the efficiency of constant inspection in the weights and measures service.

Referring to the additional protection against short weight or measure afforded by the Pre-Packed Food (Weights and Measures: Marking) Order, 1950, the report says:

"In so far as the city of London is concerned the most important features of this order are the provisions which relate to importers and wholesalers of pre-packed food. Over 30 *per cent.* of the wholesale trade of the country is centred in Greater London, and more than a quarter of this is concentrated in the square mile of the city. According to the last Board of Trade Census of Distribution, the wholesale group of produce, provision, grocery and confectionery trades is the largest group in the city; its annual sales amounting to over £600 million.

"With a view to assisting these importers and wholesalers to comply with the provisions of this order a service is available to them whereby samples of pre-packed food are submitted to the office so that a check of their contents and marking can be made before the goods are exposed for sale throughout the country. . .

"While this service is not a statutory duty, the facilities offered do a great deal to prevent the distribution of pre-packed food which does not comply with the order. It is welcomed by the trade as a means of protection against complaints and possible prosecutions by inspectors in various parts of the country into whose area faulty pre-packed articles might otherwise be supplied."

Fuel oil assumes large proportions in relation to heating in the city: one building alone uses upwards of 10,000 gallons per week during the winter months. The fuel is delivered in road tank wagons. At present, says the report, there is no legal obligation to sell by weight or volume, and giving of short weight or measure is not in itself an offence and no powers or methods are prescribed whereby inspectors of weights and measures can check quantities as deliveries are made. It is to be hoped, goes on the report, that this unsatisfactory position will be rectified when the new Weights and Measures Bill emerges as a result of the recommendations of the Committee of Inquiry on Weights and Measures legislation set up in 1948.

LANCASHIRE NO. 9 AREA PROBATION REPORT

The report of Mr. J. W. Marsh, senior probation officer for the Lancashire No. 9 Combined Probation Area, contains the now frequent statement that there has been some increase in the number of cases in which adult offenders have been placed on probation. This is welcomed, because it is felt that in many instances not only the offender himself, but also the family as a unit derive benefit from the social therapy inherent in the order. This increase is naturally coupled with an increase in the number of social inquiries ordered by the magistrates in respect of adult offenders.

Mr. Marsh has evidently given serious thought to the question of parents and their duties towards their children, and his reflexions show real insight. "Many parents," he says, "are preoccupied with material standards, tending to overlook the emotional needs of the child and the important part that they themselves must play in the

formation of character and the development of self-discipline. In short they will give the children anything except their time, which is occupied by work and their own leisure pursuits. . .

"Most of these parents were growing up during the depression of the 30's and were keenly aware of the prevailing hardships. This memory may well account for the tendency of some to over-indulge their children, leaving them ignorant of true values. The effects of the war no doubt emphasize this reaction and make it more difficult to bring home the theory of the therapeutic value of work for its own sake."

Young people tend to change their jobs whenever there is a chance of more pay, regardless of the nature of the job, and all too often parents acquiesce. Girls, says this report, tend to regard financial considerations as all important, and frequent changes of job lead to further restlessness at a time when their greatest need is stability.

On mothers at work, Mr. Marsh agrees that arguments in favour are superficially convincing as the children gain much in material advantages. The fact remains, however, that even if the children are under some sort of supervision from a neighbour they lose some part of their mother's interest, energy and attention. Mr. Marsh says, "This point of view is wholly unconvincing to a parent bent on providing her children with a television set or some additional luxury, but if her working day overlaps the school day by an hour or even two hours, as is often the case, then unless her child is exceptionally coherent, she may well be ignorant of some of the lines along which his character is developing and also of the kind of friends he is making. The working mother is apt to resent taking any time off work—purely on financial grounds—in order to visit school teachers and even to clear up odd outbreaks of truancy. It is not unknown for a mother to complain that she does not know where her daughter is going in the evenings, but at the same time decline to take any active measures to find out on the grounds that work does not permit."

In a separate report signed by Mrs. M. E. Fletcher, chairman of the committee, and Mr. G. S. Green, clerk to the justices, several interesting cases are outlined, including one in which a 15 year old, mentally retarded boy, who had been adopted, had rejected his adoptive mother after his natural mother had made herself known to him at about school leaving age. The subsequent course of events was that following unsatisfactory behaviour perhaps in consequence of emotional disturbance, his mental condition deteriorated, and he became in urgent need of treatment. The probation officer concerned, with the full support of his case committee, was able, with great difficulty, to secure a place in one of the best mental hospitals in the country and the boy was placed there for treatment. At the conclusion of his treatment and on medical advice he returned to his natural mother who left him (within a very short time) and the break having been made with his adopted mother the only course was for him to be placed in the care of the local authority.

The lesson to be learned from this case the report suggests, is a hope that some sanction should be available in the future to prevent natural parents who had consented to adoption from subsequently interfering with the lives of those adopted.

HOUSING THE ELDERLY IN RURAL DISTRICTS

A very informative paper on the "Housing of the Elderly" was submitted to the annual conference of the Rural District Councils Association at Blackpool by the Rev. A. C. Smith, M.A., in which he described a scheme approved by the Spilsby rural district council, and by the Ministry of Housing and Local Government. He showed that with the increasing number of the aged in rural, as well as in urban areas, old age has become an acute problem which must be faced by the local authorities; and that the housing authority must take a greater part, although it is the duty of the county council and of county borough councils to provide residential accommodation for those requiring care and attention. The views he expressed are just as pertinent in urban areas. He said a great deal of unhappiness was caused by transferring old people to "palatial residences" where everything was provided, for old people found it almost impossible to make new friends and learn a new way of life. All those concerned with the welfare of the aged now agree that it must be the general aim to prevent elderly people giving up their own homes and going into any kind of institution. As shown by Mr. Smith in his paper the local authority health and welfare services are available but, in a rural district it is only the rural district council or a voluntary housing association, which can make it possible for many elderly people to be enabled to take advantage of the county domiciliary services by being properly housed.

An unofficial survey was made in one of the villages in the Spilsby rural district and it was found that there were 13 old people in real need of accommodation. The council agreed that this was a case in which a group of bungalows, or flats, should be erected. Similar action is to be taken in other villages. As far as possible the dwellings will be built in the centre of the village so that they are not isolated from the community. There will be six flats in each block, each consisting of a bed sitting room with kitchenette and all necessary services. The centre block will consist of a common lounge with an open fire, stores and bathroom. A corridor will connect all the flats and central heating will be provided throughout. The total floor area of the block of six, including the common room, is 2,580 *sq. ft.* and the estimated cost is £5,350 or under £900 per unit. The rent will be 20*s.* a week including rates, heating, electricity for lighting and cooking, etc. After taking into account the Exchequer subsidy the estimated annual amount to be borne by the Housing Revenue Account for the six units is £27.

A warden will be appointed for each group and will probably be a married person who goes out to work. Only a small wage would be required for her services which would include care of central heating, lighting the fire and cleaning the common room and passages and general supervision with daily visits to each tenant and such small duties as might be required in case of sickness. The county council will contribute £20 per unit in respect of such welfare services and amenities as are provided in excess of normal local authority housing provision, including warden's expenses, furnishing of lounge and guest room and the laundry.

This is a somewhat similar arrangement to that already in operation in some other rural districts and is a development of the pioneering scheme which was started in the Sturminster district in Dorset.

COUNTY BOROUGH OF SOUTHAMPTON: CHIEF CONSTABLE'S REPORT FOR 1955

Although this force is not greatly below its authorized establishment (371 and 350 are the respective figures) the report shows that they were not able during the year to replace their losses. Retirements, resignations and one transfer meant a loss of 25 men and new appointments and transfers-in replaced only 21 of these losses. It must be remembered, however, that the figure of 371 was the result of an increase, in November 1955, of 14 authorized by the Home Office on account of the introduction of the 88-hour fortnight. An increase of 25 was asked for, and in authorizing the increase of 14 the Secretary of State intimated that consideration would be given to a further increase when existing vacancies had been filled.

There was a considerable increase, compared with 1954, in the number of days lost through sickness and injuries, The 1955 total was 3,943 and that for 1954 was 2,747. Last year's total is the highest since 1951 in which year the figure was 3,916.

The 235 special constables (there are four women included) did about 5,500 hours duty during the year, together with special duties in assisting their regular colleagues during municipal elections, the annual church parade and on other special occasions.

The strength of the criminal investigation department in the force is only 39. During the year 14 uniformed constables were attached to the C.I.D., each for a period of eight weeks, for training which is carried out at the C.I.D. headquarters.

The recorded crimes, in 1955, numbered 2,683 and of these 1,401 were detected, 428 by the uniformed branch and the remainder by the C.I.D. The 2,683 was an increase of 73 on the 1954 figure, which increase was accounted for mainly by thefts of bicycles and thefts from unattended vehicles. We are interested by, but do not fully understand, the purport of the sentence " Checks on persons in charge of pedal cycles in the street and periodical identification parades have resulted in a further 242 machines being returned to their respective owners."

The borough's criminal record office now has 11,033 permanent case files where the names of 5,680 people are recorded. The fact that some criminals tend always to work along the same lines enabled 16 persons to be identified as responsible for offences, reliance being placed by the police in their cases on the " *modus operandi* system."

The traffic problems of the borough continue to increase, as do the number of accidents. In 1950 the total was 1930. Apart from a slight drop in the 1952 figure compared with 1951, there has been, since 1950, a steady increase to the 1955 total of 2,691. Of this total 2,448 (90·97 *per cent.*) were attributed to human error, with lack of care or judgment by motorists well in the lead with 1,845 cases. Lack of care or judgment by pedestrians account for 240, and by pedal cyclists for 315. The next biggest offenders, with 143, were dogs not under control.

The police had to escort 102 abnormal indivisible loads to or through the borough, including one monstrosity which was 138 *ft.* long and which weighed 216 *tons*. This was the largest the police there have ever escorted.

It is very fairly pointed out that in considering the increasing number of accidents we must bear in mind the steady increase in the number of vehicles on the roads. For 1939 the national figure was 3,148,600. By 1950 it had increased to 4,409,223 and by 1954 to 5,770,647, plus, for the last quoted year, 57,037 government-owned vehicles.

During 1955, there were 21 prosecutions for offences against s. 15 of the Road Traffic Act, 1930, five fewer than in 1954. Of the 21 cases one was still pending when this report was issued, two others resulted in aquittals, two men were sent to prison and the remaining 16 persons were fined. All those convicted were disqualified for driving, the period of disqualification ranging from one to three years.

Up to the end of 1955, 106 boys had been sent to the local attendance centre, 41 in 1953, 33 in 1954 and 32 in 1955. Of the 106, 13 have since reappeared before a court, one being sent to borstal, seven to approved schools, three to a further period at the attendance centre and two being placed on probation.

DERBYSHIRE FINANCES, 1956/57

The eighth annual booklet of Derby financial statistics prepared by County Treasurer Mr. T. Watson, F.I.M.T.A., F.S.A.A., with the collaboration of county district chief financial officers was published in May last: it well maintains the high standards of previous issues.

Population of this county of 635,000 acres was estimated at mid-1955 as 705,000: although the figure represents an increase of 20,000 over the 1951 census we observe that practically all of the rise in population occurred in the two rural districts of Chesterfield (increase 15,000) and Shardlow (increase 4,000). Chesterfield on one boundary adjoins the county borough of Sheffield and part of Shardlow's boundary runs with a great part of that of Derby county borough.

As a result of the revaluation the penny rate product in the county is estimated at £25,700 and general rates levied average 16*s.* 11*d.*, a decrease of 5*s.* 10*d.* as compared with the previous year. General rates levied per head of population average £8 2*s.* divided as follows:

	£	*s.*	*d.*
Non-county boroughs ..	9	10	10
Urban districts	8	2	11
Rural districts	7	7	5

In 1954/55 the average figure was £6 8*s.* 10*d.*, and in 1939/40 £3 2*s.* 11*d.*

The analysis of rateable value as at April 1, 1956, shows that domestic properties with a rateable value not exceeding £13 still number 35 *per cent.* of all hereditaments and represent 12 *per cent.* of all rateable value. Domestic properties with a rateable value exceeding £18 but not exceeding £25 are the largest single class on both counts, representing 25 *per cent.* in number and 21 *per cent.* in value.

Following the usual pattern capital payments in 1955/56 were largely for housing, which accounted for £4,700,000 out of a total of £7,300,000. Education capital expenditure amounted to £1,300,000 and all other to the same figure.

Net loan debt of all authorities in the county at March 31, 1956, amounted to £62 million, of which £47 million was on housing account, the housing debt being equal to £67 per head of population.

Nineteen out of the 29 housing authorities estimate surpluses of varying amounts on their housing accounts at March 31, 1957, the largest being Chesterfield R.D.C. at £61,000: this authority had built 5,800 houses by the end of the previous financial year (the largest number of any authority in the county), and is one of four Derbyshire authorities which operates a rent rebates scheme. Net rents of typical three-bedroom type houses vary in this rural district from 14*s.* 4*d.* to 17*s.* 4*d.* for pre-war and 17*s.* 9*d.* to 20*s.* 3*d.* for post-war houses. Rateable values for pre-war houses vary from £15 to £19, and for post-war from £20 to £22, rather below the county average.

Contributions to housing repairs funds averaged £8 16*s.* in 1956/57 whereas repairs expenditure per house is estimated to average £8 18*s.* 10*d.*

The money for housing is found as to 60 *per cent.* from the tenants and 40 *per cent.* by subsidization from public funds.

COUNTY BOROUGH OF EASTBOURNE: CHIEF CONSTABLE'S REPORT FOR 1955

This is one of the luckier forces so far as manpower is concerned. Their establishment, on December 31, 1955, was 127 and their actual strength was 121. During the year they lost 12 members (four to take up other employment) and they had 11 recruits and one transfer-in.

An unusual item of interest in the report concerns the Beachy Head rescue apparatus. It is recorded that from time to time, as older members of the force leave, courses of instruction in cliff rescue and the use of the rescue apparatus are arranged to ensure that as many members of the force as possible are thoroughly conversant with the hazards that may be encountered and the efficient use of the apparatus. Trained personnel are available to effect a rescue at any time. Those taking part are all volunteers and about 40 additional members of the force took instruction in 1955. The ordinary visitor to Eastbourne would never realize, we feel sure, that such special precautions are taken to try to ensure the safety of people who, in many cases, quite needlessly get themselves into difficulties and in doing so give other people a great deal of unnecessary trouble involving, for the rescuers, considerable danger.

The chief constable is very favourably impressed by the good relations existing between the police and the public, and is grateful for the many letters of appreciation which are received. He calls attention to the way in which many policemen give their off-duty time to the service of their fellow citizens and mentions work as scout masters and as youth club leaders. He commends these men and " hopes they enjoy the satisfaction due to all who strive for a credit balance in life—to put into it more than they take out."

Dealing again with public relations the report urges that everyone should report promptly to the police anything suspicious which he can reasonably suppose may be an indication of the commission of a crime so that the police may have the chance promptly to investigate the matter.

The special constables number 63 and they are thanked for the many duties performed by them during the year. It is noted that active members often assist the regular force on bank holidays and at week-ends. This must be a great boon to the regular police because the traffic problem at such times must, for Eastbourne as a holiday resort, be a serious one. A handbook of instruction for special constables is to be issued shortly to each member.

During 1955 there were 666 recorded crimes, with a detection rate of 61·56 *per cent.* The 1954 figures were 668 and 62·27 *per cent.* 69 juveniles were responsible for 108 crimes, and 36 of them were taken before the juvenile court. In 25 out of the 36 cases a probation order was made. Only two were sent to approved schools.

The particulars of non-indictable offences show that 362 persons were charged in respect of 541 offences. Road traffic offences made up the great majority of this total and included two cases of dangerous driving and 79 of careless driving and three of driving without reasonable consideration. There were only 18 charges of obstruction, a remarkably small number in a town to which so many visitors with cars travel. The answer is probably to be found partly in the fact that it is recorded that there were 1,520 " on the spot " cautions for motor vehicle offences of various kinds, and partly in the fact that there are 68 authorized street car parks in Eastbourne.

Having regard to the fact that there were only 31 charges of drunkenness during the whole year it is somewhat surprising to find as many as five charges of offences against s. 15 of the Road Traffic Act, 1930. Four of these were dealt with summarily and the fifth remained to be tried at quarter sessions.

GLEANINGS FROM THE PRESS

Daily Telegraph. June 29, 1956

GENERAL SIR FRANK MESSERVY

Hearing Adjourned

General Sir Frank Messervy, 62, appeared at a special court at Wokingham, Berks, yesterday, accused of an attempted serious offence against a 13 year old girl at Wokingham on May 29. At the request of the Director of Public Prosecutions the hearing was adjourned until July 17.

The general, wearing grey flannels and blazer, arrived at the court, accompanied by his wife, in a car driven by one of his sons. During the two-minute hearing he sat between his wife and son at the rear of the court.

The magistrate, Mr. L. A. Hackett, said that as the general had appeared in answer to a summons the question of bail did not arise. General Messervy, who did not speak during the brief hearing, left the court with his wife and son.

Among the general's wartime commands was that of the 7th ("The Desert Rats") Armoured Division in 1942. He was G.O.C. in Malaya in 1945 and became the first Commander-in-Chief of the Pakistan Army in 1947. Since his retirement the following year he has been living at Wokingham.

In this case the defendant was charged with an indictable offence. The hearing was adjourned and the defendant was allowed to go at large, without bail, the magistrate observing that as the defendant had appeared in answer to a summons the question of bail did not arise.

The question of bail arises in indictable cases, when the magistrates' court is acting as examining justices, under s. 6 (1) of the Magistrates' Courts Act, 1952, which reads "a magistrates' court may, before beginning to inquire into an offence as examining justices, or at any time during the inquiry, adjourn the hearing and if it does so shall remand the accused." The accused must therefore be remanded in custody or on bail (s. 105).

In adjourning a case they are trying summarily magistrates must remand the accused in custody or on bail, if the accused has attained the age of 17, and if (*a*) the offence is not a summary one, or (*b*) the court has proceeded under subs. (3) of s. 18 of the Magistrates' Courts Act to summary trial after having begun to inquire into the offence as examining justices (ss. 14 (4) and 105).

The Birmingham Post. May 30, 1956

15 DAYS IN PRISON WAS ENOUGH

Men Released at Quarter Sessions

Told by the chairman, Judge T. W. Langman, that they had been sufficiently punished, James Ivor Jones (59), a farm worker, of Castleton Barn, Clifford, Herefordshire, and his son James (25), of the same address, were released from prison, after serving 15 days, by the Appeals Committee of Herefordshire quarter sessions yesterday. At Bredwardine magistrates' court, they had admitted stealing two sacks of wheat and a sack of potatoes from their employer and were committed for sentence. The police and the clerk to the court, Mr. F. A. Trumper, pointed out to the chairman at Bredwardine that both men bore perfectly good characters and Mr. Hamer, their employer, said he was prepared to continue to employ them.

Yesterday Mr. Maitland Coley, defending both men, said: "The good offices of the police and clerk were unavailing and they were sent to prison to await sentence. Under the remarkable circumstances of this case you may feel that they have been punished enough, if not too much."

Giving both men a conditional discharge the Judge said: "We do not know what reasons led the magistrates to commit these men to quarter sessions, but because they have had sufficient punishment they will now be released."

Outside the court there was a family reunion, and the father said: "Never again! The worst of it has been the loneliness at nights. It is the first time I have ever been away from the sound of the birds."

In this case two men were convicted summarily and sent to quarter sessions for sentence under s. 29 of the Magistrates' Courts Act, 1952. It would seem that the magistrates' court took that course although the clerk had advised the bench that the defendants had no character or antecedents which would justify that action being taken.

Section 29 reads, "Where on the summary trial under subs. (3) of s. 18 or s. 19 of this Act of an indictable offence triable by quarter sessions a person who is not less than 17 years old is convicted of the offence, then, if on obtaining information about his character and antecedents the court is of opinion that they are such that greater punishment should be inflicted for the offence than the court has power to inflict, the court may, instead of dealing with him in any other manner, commit him in custody to quarter sessions for sentence in accordance with the provisions of s. 29 of the Criminal Justice Act, 1948."

It was decided in *R.* v. *Vallett* [1951] 1 All E.R. 231; 115 J.P. 103, that "character and antecedents" are not limited to previous convictions, and include such matters as that the offender asks for a number of other offences to be taken into consideration. In *R.* v. *Warren* [1954] 1 All E.R. 597; 118 J.P. 238, the appellant was convicted on four charges of indecent assault on small boys and was committed to the county of London Sessions for sentence under s. 29. He was sentenced to five years' imprisonment. He had not been previously convicted of any offence and it was sought to raise on his behalf in the Court of Criminal Appeal the contention that the committal was invalid as the appellant had no "character or antecedents" which would justify the committal. That point was not decided. The court held that the question of the validity of the committal could not be raised before the Court of Criminal Appeal, but only by application to the Queen's Bench Division for an order of prohibition or *certiorari*. The court further held that under s. 29 (3) (*d*) of the Criminal Justice Act, 1948, an appeal lay to the Court of Criminal Appeal on sentence only; and that in the circumstances of the case the sentence would be reduced to one of three years' imprisonment.

The defendants in this case in Hereford appealed against their conviction. There is no right of appeal to quarter sessions against a committal for sentence (*R.* v. *London Sessions, ex parte Rogers* [1951] 1 All E.R. 343; 115 J.P. 108). The defendant may, however, appeal against his conviction under s. 83 of the Magistrates' Courts Act, 1952. Bail pending the appeal cannot be granted by the magistrates' court (s. 89 (2)), but it may be granted by the High Court under s. 37 (1) (*a*) of the Criminal Justice Act, 1948 (*Re Whitehouse* [1951] 1 All E.R. 353; 115 J.P. 125).

Western Mail. June 2, 1956

THE INNOCENT ABROAD

Dennis Ryan pleaded guilty to a charge of stealing a fellow worker's pay packet when he appeared before Newport magistrates yesterday —but for nearly an hour the court tried to persuade him to change his mind.

Eventually, after Ryan's case had been adjourned for a few minutes, the magistrates succeeded.

Ryan, a 54 year old Irishman, of no fixed address, pleaded not guilty and the case was dismissed.

Three Packets

The court was told that the pay packet had been handed to Ryan by mistake. Ryan was due to draw two pay packets, which were put inside his insurance card. The third packet, containing £11 19s. 6d., was also handed to him. Later Ryan discovered this and kept the money until the police took him into custody.

After hearing this, Mr. J. R. Rowlands, the clerk, pointed out that the Court of Appeal had found in a similar case that this was not stealing, and for half-an-hour Mr. Rowlands attempted to explain this to Ryan, asking him several times if he wanted to change his plea of guilty.

Again and again Mr. Rowlands and the chairman, Mr. R. S. Snelling, tried to explain the position to Ryan. But every time, until the last, he replied, "I want to plead guilty."

The case to which the learned clerk referred is the case of *Moynes* v. *Coopper* [1956] 1 All E.R. 450.

The facts in that case were that on April 29, 1955, Moynes, who was employed by a firm of contractors, asked for, and was given, an advance of wages amounting to £6 19*s.* 6½*d.*, the full amount of his wages being £7 3*s.* 4*d.* On the same day the employers' wages clerk, being unaware of the advance of pay, put £7 3*s.* 4*d.* into a wages packet, which, on May 2, 1955, he handed to Moynes. When he received the packet, Moynes did not know that it contained £7 3*s.* 4*d.* and first discovered this when he opened the packet later that day, whereupon he appropriated the whole amount, thus keeping £6 19*s.* 6½*d.* more than that to which he was entitled. He was charged with stealing £6 19*s.* 6½*d.* He was convicted by the justices at West Malling. He appealed to West Kent quarter sessions. His appeal was allowed and the conviction quashed. The prosecutor then appealed to the High Court by Case Stated. The Divisional Court of the

Queen's Bench Division hearing the appeal consisted of Lord Goddard, C.J., and Hilbery and Stable, JJ. The Court held (Stable, J., dissenting) that Moynes was not guilty of larceny, since in order to constitute a " taking " within the meaning of the Larceny Act, 1916, s. 1 (2) (*c*), there must be *animus furandi* at the time of the taking, and at the time when Moynes took the wages packet with the money in it, the taking was not *animo furandi* as he did not know that there was the £7 3*s*. 4*d*. in the packet.

REVIEWS

Pratt and Mackenzie's Law of Highways. Supplement to Nineteenth Edition. By Harold Parrish. London: Butterworth & Co. (Publishers), Ltd. Shaw & Sons, Ltd. Price 6s. net.

This supplement is small because, in the four years since the main work appeared in 1952, Parliament has on the whole been mercifully sparing of intervention in the law of highways.

The learned editor mentions the decisions in *Huyton-with-Roby Urban District Council* v. *Hunter* [1955] 2 All E.R. 398; 119 J.P. 407, upon the Private Street Works Act, 1892, and *Richmond* (*Surrey*) *Corporation* v. *Robinson* [1955] 1 All E.R. 321; 119 J.P. 168, dealing with the liability for public footpaths. Not everybody will agree with him in welcoming the latter, which some of our readers (we know) have regarded as introducing new confusion into the law. There have been a few minor statutes which are mentioned in the preface; it might be a good thing for the Government to introduce short consolidating Acts, on one or two matters, without waiting for the consolidation of highway law as a whole. This last has been hanging about for 20 years, having been in contemplation of the then Government at the same time as the Public Health Act, 1936, and the Food and Drugs Act, 1938. A committee under the appropriate chairmanship of the late Lord Amulree, one of the learned authors of the main work, was set up; from time to time an echo penetrates to the outer world of discussions still taking place behind the scenes, but until Parliament deals with this overdue consolidation *Pratt and Mackenzie* will remain the next best thing. It gives all the answers, and in the present supplement there will be found a number of incidental matters, some important and some interesting, to be borne in mind when using the main volume.

The complete work including the main volume and supplement costs £6 10*s*. Few of our local government readers, we hope, will have been rash enough to do without the work. Those who have it will be glad to know that a modest 6*s*. for this supplement will bring it up to date.

Juvenile Offenders before the Courts. By Max Grünhut. London: Sir Geoffrey Cumberlege. Price 21s.

In recent years more has been written about delinquency than about the juvenile courts. Innumerable have been the reasons advanced for the appearance of Johnny Smith at his local court; but it has not been so easy to discover how the court dealt with him once he was there. Mr. Grünhut is concerned about this gap in public knowledge, and this book is his attempt to fill it.

He is the first to acknowledge the help of others—and certainly such a task would have been all but impossible without a research organization and official encouragement: the Home Office and the Oxford Social Studies Board have assisted in the provision of the manifold information presented with great clarity in this closely-packed and well-produced volume.

One imagines that no magistrate or social worker would care to be without the book, for it provides a survey of juvenile courts in England and Wales which is up-to-date and comprehensive. Mr. Grünhut is clearly concerned at the disparities in treatment for like offences which his statistics and comment reveal. But it is well to refrain, as he does, from tendentious criticism. The social problems in town X may be very different from those of town Y, and magistrates are bound to take into account the general moral climate in which they operate, and also to bear in mind the range of facilities available to their courts.

It is no use making a Fit Person Order to a local authority unless there is a near certainty that the child will quickly be placed in a home or school which will meet the needs which inquiries have revealed. One has to remember that the ideal solution of a juvenile's problem is not always available: those who work in a region amply blessed with a wide variety of treatment facilities should be careful not to criticize actions taken by others who, quite literally, had to make the best of more limited opportunities. Mr. Grünhut's book clearly brings out a fact which many had already divined: that local practices vary markedly. He is less successful in revealing the reasons for these variations. In general his comment is extremely restrained, but towards the end of his book he seems to contemplate a diminution of the juvenile courts' criminal jurisdiction with some equanimity. Here, certainly, he touches on controversial ground. Before we explore it with any confidence we shall need the guidance of the forthcoming Departmental Committee.

The Deprived Child and the Community. By Donald Ford, London: Constable. Price 20s. net.

The author has written this book particularly for laymen, but it is a pity he could not have thought of a better title. There is a real danger that the expression " deprived child " will soon become as much a term of reproach as the old term " pauper child," but which was generally discontinued long before the Boards of Guardians went out of office. This is the second book containing these words in the title which we have reviewed and we hope the next author who writes on the subject will not produce a third on which we shall have to again similarly comment.

Forgetting the title, we can, however, commend the book for the purpose for which it was written and it should also be useful to professional workers. The author rightly draws attention to some matters on which there is misconception among the general public. For instance, he shows that it is the earnest wish of every child-care worker to prevent children ever coming into care, as it is recognized that the best place for any child is in its own home where there is any sort of a home at all. After describing the functions of reception centres, which are now being generally provided, the author goes on to consider adoption which is agreed to be the best solution of providing a home for a child whose own home is non-existent. But he draws attention to the " black market " in babies for adoption illustrated by recent " kidnappings " of children in Eire. There are apparently more people wishing to adopt children than children available for adoption; the reverse is true of the fostering of children for payment. On the difficulty of obtaining enough suitable foster homes he suggests that this is, ultimately, a community problem. A district where good relations have been established is fruitful in the production of foster homes, and the foster homes themselves, the children placed in them and the foster parents with whom they are placed have an added sense of security. Discussing the residential care of children it is agreed that children's institutions as such have done splendid work in their time, and the author believes, in certain circumstances, they will still have a place in the pattern of child care. This accords with the views of the Curtis Committee but is a matter on which there seem to have been some differences of opinion.

On the need for integrating in the community children in the care of local authorities (" deprived children " the author calls them here again) reference is made to the value of an " Aunts and Uncles " Scheme, which was in fact operated by many public assistance authorities when they were responsible for children's homes. It cannot, however, be emphasized too often, and this is done by the author, that the ultimate success of all child-care work depends on the degree of success with which children, while young, can be integrated into the community.

A later section of the book refers to children who come into care under " fit person " provisions and in this connexion it is suggested that on occasion a more realistic assessment of the needs of individual children might be made in the juvenile court. Finally, the author deals with the possibilities of the prevention of " deprivation " rather than with how it is to be coped with once it has occurred. We hope he will expand his ideas on this subject in the companion volume which he is writing on the problem of the " Delinquent Child and the Community."

Obscenity and the Law. By Norman St. John-Stevas. London: Secker and Warburg: 1956. Price 25s. net.

When preparing the articles on this subject which we published in 1954, and then re-issued separately as a 2*s*. pamphlet, we discovered that little had been done towards collecting in book form the story of the dealings of English law with English literature since Parliament suddenly became obscenity conscious a 100 years ago. There were controversial books, scarcely pretending to give a balanced account, and there was a judicious essay written years ago by Sir Desmond MacCarthy. Beyond this the seeker after truth had to go to the reports of decided cases. These were not informative, because several important cases did not fall within the scope of " reporting " in the narrow sense. Moreover, notices of current cases in the newspapers were nearly always too short or too sensational to be relied on. We therefore warmly welcome the present publication by Messrs. Secker & Warburg, who have themselves suffered under the law as

now existing and administered. The author is a member of the bar and a university lecturer, and has examined the problem from the legal and literary points of view alike. The book is a storehouse of information—some of it decidedly amusing, such as the fact that Gilbert and Sullivan collaborated in a deliberately obscene opera, which of course was not meant for publication, and (more seriously) the fact that *The Rainbow*, which in the absence of any defence by its publishers was ordered by the chief magistrate to be destroyed in 1915, appeared in 1949 in the Penguin series. He does not however seem to have grasped how leading counsel's hands were tied, in our opinion, in the case of *The Well of Loneliness: see* p. 8 of our pamphlet of 1954, and while he deals faithfully with the judgment of Cockburn, C.J., in *R.* v. *Hicklin* (1868) L.R. 3 Q.B. 360, and mentions *Steele* v. *Brannan* (1872) 36 J.P. 360, he does not fully explain the link between these two cases. Nor does he seem to us to appreciate sufficiently the distinction that can exist in theory (and on paper does exist in English law, though it is often slurred) between proceedings against a person and proceedings for the condemnation and destruction of a book, a distinction which means that there would be no logical objection, whatever objection there might be on literary grounds, to making sanctions against persons depend upon intent, whilst allowing proceedings to be taken to destroy a book or picture, whatever the intent of the author, publisher, or artist. There are analogies in other branches of the law. What is needed here, given the persistent English attitude on censorship, is an improvement in procedure, where proceedings are taken against the property rather than against the person. We do not think that this comes out sufficiently in the book before us.

It is true, as the author says at p. 143, that *Hicklin's* case has produced serious confusion, but the distinction certainly exists in English law between a publication which is and one which is not against the public interest, and (as we showed in our own pamphlet) the settled rejection by our courts of considerations of literary and artistic merit, as distinct from scientific merit, is contrary to a principle expressed long ago in English law.

There is a good list of reported cases, in the United Kingdom, Commonwealth, and United States; though it is a pity that the first group are headed "English" cases—the Scottish courts have not been idle in this field. We also regret the citing of Crown prosecutions by the defendant's name alone. This saves printing and paper, but is still unconventional enough to irritate a legal reader. We were also surprised to find Sir William Joynson-Hicks given the impossible style (in English) of "Sir Joynson-Hicks"; and this more than once, after being correctly named on earlier pages.

The Obscene Publications Bill, 1955, is printed in the appendix and it is interesting to note how far the draftsman of this has followed suggestions we made in our articles of 1954. As might be expected, the author deprecates the decision of Parliament to deal separately with the (so-called) horror comics. We are not sure that here he is on sure ground. In our articles of 1954 we spoke with approval of a recent Canadian statute, which did treat what have come to be called horror comics under the same heading as obscenity in the ordinary sense, and we are open to conviction. On the whole, however, we think that the question of obscene publications, in so far as it has to be dealt with at all, is best kept separate. In saying "in so far as it has to be dealt with" and in referring earlier in this review to the settled English attitude of mind, we are assuming that freedom to print or paint and publish what the author or artist wishes to lay before his public is something which in this country would never be conceded. A very limited section of opinion is prepared to condemn all censorship in principle, and most educated persons condemn some ludicrous excesses of the existing censorship, but, as we said two years ago, the mass of the public are indifferent and, when they think at all about the matter, are disposed to welcome censorship because it saves them trouble. The highly curious history of the cinematograph in this country is sufficient proof.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"POLICE NOT DECEIVED"

Making false statements to the police and so wasting their time may, as you say in the last paragraph of your note at p. 387, be prosecuted as the common law misdemeanour of effecting a public mischief. Few would, however, envy the task of counsel called upon to support an indictment which alleged this offence without any element of conspiracy since the Court of Criminal Appeal made its observations on the subject in *R.* v. *Newland* [1954] 1 Q.B. at p. 168, [1953] 2 All E.R. 1067.

Or do you think that the prosecution could rely on *R.* v. *Manley* (1933) 97 J.P. 6 as technically binding on all criminal courts below the House of Lords notwithstanding that the Court of Criminal Appeal, as constituted for *Newland's* case and expressing itself *obiter*, considered *Manley* no longer safe to follow?

Yours faithfully,
J. F. JOSLING.

55 Downside Road,
Sutton, Surrey.

[Lord Goddard, C.J., in *R.* v. *Newland, supra*, said that *R.* v. *Manley* was binding on the Court, though he intimated that it might someday be overruled by the House of Lords. In view of what was said in *R.* v. *Newland*, however, it would seem inexpedient to prosecute in a case not involving conspiracy.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PLEA IN MITIGATION

At the court on Monday a man convicted of obtaining money by false pretences who the police said owed £100 odd rent pleaded bad health in mitigation and most appropriately said he was suffering from fiscal neurosis!

A new complaint to me, but one I felt deserved to be more widely known and recognized in these days!

Yours faithfully,
A. J. L. FERGUSON.

Justices' Clerk's Office,
High Street,
Amersham, Bucks.

The Editor,
Justice of the Peace and
Local Government Review.

SIR,

You refer at p. 387, *ante*, to complaints that there are not enough magistrates in some parts of the Dolgelley district to make it easy for people to have documents signed. Is not the solution to this problem (which exists in many areas) not to appoint more magistrates but to devise fewer documents requiring magistrates' signatures?

Most of the forms brought to me require only my signature to the effect that they have been signed by the applicant in my presence. (More often than not, the applicants, trying to be helpful, have completed them, signature and all, before they present themselves; but that is another story.)

Does this witnessing of signatures serve any useful purpose?

If it does, could it not be as well served by witnessing by the counter clerk who takes delivery of the form when it is delivered personally?

Yours faithfully,
MEREDITH WHITTAKER.

Aberdeen Walk,
Scarborough.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

HIGHWAY—OVERHANGING SIGN—DAMAGE BY PASSING VEHICLE

With reference to your answer to P.P. 2, at p. 321, might I point out that s. 91 of the Public Health Acts Amendment Act, 1907, was repealed as from July 1, 1948, by virtue of s. 113 and sch. 9, part II, of the Town and Country Planning Act, 1947. It appears that control of all advertisements (including sky signs) is now exercised in accordance with the Town and Country Planning (Control of Advertisements) Regulations, 1948, as amended—in particular, please *see* reg. 4 (2) (*b*).

Yours faithfully,
ROBERT POTTER.

Municipal Offices,
Bacup.

[We agree, and are greatly obliged for this correction of an oversight.—*Ed., J.P. and L.G.R.*]

PERSONALIA

APPOINTMENTS

Mr. Alexander James Paterson, chief constable of Salford, has been recommended as the new chief constable of Leeds. Subject to the approval of the Home Secretary, he will take over the post on October 1, succeeding Mr. J. W. Barnett. Mr. Paterson was chosen from a short list of seven. He is 47 years of age and began his 24 years' service in the police at Aberdeen, where, during a period of 16 years, he rose from police constable to deputy chief constable. He became Salford's youngest chief constable when he was appointed at the age of 39 in 1948. He is an M.A. and a Bachelor of Laws of Aberdeen University. He was awarded the B.E.M. in 1944.

Mr. H. W. Kirkwood has been appointed an assistant official receiver for the bankruptcy district of the county courts of Sheffield, Barnsley and Chesterfield. This appointment, announced by the Board of Trade, took effect from July 2, last.

Mr. George Macavoy has succeeded Mr. Henry Harris as deputy clerk to Liverpool city justices. Mr. Macavoy has been a member of the staff of the justices' clerk's office in Liverpool since 1928. In 1947 he was articled to Mr. H. A. G. Langton, clerk to the Liverpool justices, and was admitted in 1952, when he was awarded a prize by the Law Society for the best examination paper in the final examinations for that year, on the law and practice of magistrates' courts.

Mr. John Lewis, who has been in the probation service for 12 years, five years at approved schools, has been appointed a probation officer for Aylesbury, Bucks.

Mr. Peter Westland has been appointed a probation officer to serve the city and county of Newcastle-on-Tyne. Mr. Westland is 23 years of age. He was accepted and admitted to the Home Office probation training scheme in 1954, after practical probation work in Scunthorpe and Newcastle-on-Tyne. From July to September, 1955, Mr. Westland trained with the Birmingham probation service, following which he became a student in applied social studies at the London School of Economics. This year Mr. Westland has had practical training in East London juvenile court probation office. Mr. Westland is a Bachelor of Arts (Social Studies) of King's College, Newcastle-on-Tyne.

Mr. C. T. Dawson, who announced in April that he would resign his appointment as Ipswich coroner, has said that he will continue in office for a further three months. His retirement from the office was to have dated from June 30. Mr. Dawson has been coroner for Ipswich since 1932. He is a past president of the East Anglian Coroners' Society and for the last six years has served as that society's representative on the council of the Coroners' Society of England and Wales.

Mr. Stephen Johnston, deputy coroner for Hemel Hempstead, Herts., is being promoted coroner in succession to Lieutenant-Colonel F. Smeathman, coroner for 30 years, who is retiring.

RETIREMENTS

Mr. Joseph Lloyd is retiring this summer after 45 years' service as clerk to Stockport county borough justices. He is 60 years of age. Mr. Lloyd succeeded the late Mr. Harry Newton in 1945 and Mr. Francis Kay Newton, Mr. Harry Newton's son, who has been Mr. Lloyd's deputy since 1945, is to succeed the latter as clerk. Mr. A. B. Walker is to become deputy clerk.

Mr. Lloyd joined the staff of the Stockport magistrates' clerk's office in April, 1911 and served under the late Mr. C. E. Lake, who was clerk to both the borough and county magistrates. Mr. Harry Newton became clerk to the borough justices on Mr. Lake's death in 1916—Mr. W. H. Hadfield being appointed clerk to the county justices. Mr. Lloyd became Mr. Newton's second assistant in November, 1919, after war service, and was promoted deputy clerk in February, 1921, succeeding Mr. T. D. Whalley, who had been appointed clerk to Bournemouth magistrates. In 1945, on Mr. Newton's death, Mr. Lloyd became first, acting-clerk, then clerk. He had been articled to Mr. Newton and passed the preliminary intermediate law, trust accounts and book-keeping examinations of the Law Society, but pressure of work prevented him from sitting for his finals and so qualifying as a solicitor.

Mr. Francis Kay Newton is 47 years of age. He is a Bachelor of Law of Manchester University. He qualified as a solicitor in October, 1932. The son of Mr. Lloyd's predecessor, and a nephew of Mr. Frank Newton, of F. Newton and Son, he was part-time assistant to his father until November, 1934, when he became acting deputy at Birkenhead, a temporary appointment during the illness of the clerk, until September, 1936. He then held the appointment of deputy to the justices' clerk at Norwich. He joined the forces in 1942. On his discharge in 1945 he was appointed deputy to Mr. Lloyd.

Mr. Albert Bernard Walker is 44 years of age. He joined the late Mr. Harry Newton in 1928 when Mr. Lloyd was deputy. He was then first assistant. He was in the N.F.S. during the war.

Major J. Humphrey Blake has now retired from the office of part-time clerk to Crewkerne justices and has been succeeded by Mr. R. H. Harbour, *see* our issue of June 30, last. Major Blake held the clerkship for over 27 years.

Mr. H. R. Horn, registrar of births, deaths and marriages for Bethnal Green metropolitan borough for 20 years, is to retire.

OBITUARY

THE LATE SIR JOHN MORRIS, K.C.M.G.

We announce with regret the death at the age of 53 of Sir John Morris, K.C.M.G., Chief Justice of Tasmania. John Demetrius Morris, born on December 24, 1902, was educated at St. Patrick's College, Melbourne and the University of that city. He graduated LL.B. in 1925 and was called to the bar of Victoria in 1927, thereafter practising in Melbourne.

In 1930 he transferred to the Tasmanian Bar and rose so rapidly that by 1940 he was confirmed as Chief Justice an appointment in which he had been acting since 1939. At the time of this promotion he was well under 40 years of age.

He successfully held his new post for 16 years and as well a number of other important ones including Chancellor of the University of Tasmania (1944). At the time of his death he was acting as Administrator of Tasmania in the absence of the Governor, Sir Ronald Cross, absent on leave in England.

Mr. J. W. S. Wilkinson, former deputy town clerk of Southport, Lancs., has died at the age of 78.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

PENALTIES FOR GANG CRIMES

Dr. H. M. King (Test) asked the Secretary of State for the Home Department whether he would introduce a Measure to increase the penalties for crimes committed by members of gangs.

The Secretary of State for the Home Department, Major Lloyd-George, replied that the law already provided severe penalties for the types of crime which were commonly committed by gangs, and there were no sufficient grounds for proposing any increases in them. It would not be possible to prescribe a higher maximum penalty, for an individual who committed a crime, on the ground that he was a member of a gang.

Dr. King: "If the law is adequate will the Minister bear in mind that any steps which he takes to secure exemplary punishment for gangsterdom, and particularly of young folk who hunt in gangs, will have the support of the British people? Will he ask the Press to help him by painting a less glamorous and more realistic picture of the cowardly behaviour of those who hunt in gangs?"

Major Lloyd-George: "The hon. Member will appreciate that the punishment for certain crimes of the sort to which one assumes he is referring is, in more than one case, imprisonment for life."

POLICE PAY LEGISLATION

Major Lloyd-George stated in the Commons that he and the Secretary of State for Scotland had been exploring the possibility of legislation on police pay. They had now completed their consideration of the matter and had decided to introduce as soon as practicable legislation which would enable effect to be given to alterations in police pay as from such a date as might be agreed in negotiation or as, in default of agreement, might be recommended by the arbitrators.

The Government would consider, in consultation with the police authorities, on whom one half of the cost would fall, whether it would be possible to include in such legislation a provision making it possible to give effect to the award of last December from 8th September, 1955 as recommended by the arbitration.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Wednesday, July 11

PUBLIC WORKS LOANS BILL—read 3a.

Friday, July 13

FINANCE BILL—read 3a.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Housing Act, 1936—*Clearance order—Definition of owner.*

The council recently declared the area surrounding certain houses to be a clearance area within the meaning of s. 25 of the Housing Act, 1936, and they will soon make a clearance order in respect thereof. I have ascertained that the property is subject to a lease which will expire in 1972, and that the lessee sub-lets to the occupiers, who are weekly tenants.

In view of the definition of "owner" in s. 188 (1) of the above Act, it appears that both the freeholder and the lessee are owners for the purposes of the Act. Schedule 3 to the Act requires notice of the making of a clearance order to be served on, *inter alia*, every owner and lessee, and the schedule to the form of order makes provision for the owner and lessee to be separately specified. Section 26 (3) of the Act provides that when a clearance order has become operative it shall be the responsibility of the owner to demolish the buildings.

I should be glad to have your advice on the following points in relation to the present case:

1. Should notice of the making of the clearance order be served on the lessee as "owner"?
2. In the schedule to the form of order, should the name of the lessee be entered in column 3 ("Owners or reputed owners") or column 4 ("Lessees or reputed lessees"), or both?
3. Who will ultimately be responsible for the demolition of the buildings—the freeholder, the lessee, or both?

P.R.W.

Answer.

1. Yes, in our opinion.
2. In column 3 as owner.
3. Both of the owners: *see* s. 26 (3) of the Housing Act, 1936. The expenses in default of demolition will be apportioned among the owners under s. 13 (2)–(5) as applied by s. 26 (4).

2.—Housing Act, 1948—*Improvement Grants and Defeasible Fees.*

I was interested to read the short article at p. 7, *ante*. My council have made an improvement grant to the trustees of a church school for the improvement of the school house. It is true that there is a slight risk of reverter should the property cease to be used for its original purpose, but my council considered that risk was well worth running in view of the considerable advantages of having a completely modernized school house in a small village, bearing in mind the present day difficulty of getting school teachers in our villages, and a consequent risk of having village schools closed. In any case, if the property reverted under the School Sites Act, 1841, there would apparently be a breach of the conditions under s. 23 (1) (*b*), and the appropriate proportion of the grant would, it appears, be recoverable from the reversioner, who would be the "owner for the time being of the dwelling," as laid down in s. 23 (2) (*a*).

This is an interesting, if somewhat academic point, but I should very much appreciate your further views on this matter.

EWSEY.

Answer.

In our article we said the risk to the council's funds might be slight. If however s. 23 is considered in that connexion we are not sure how it would apply, against a person who by title paramount had ousted the person who received the grant. As a rule, we should prefer to make assurance doubly sure as we formerly suggested, although in particular cases we might advise that there was no real objection, and we understand such advice has been received from the Ministry of Housing and Local Government.

3.—Local Land Charges—*Improvement grants—Registration of Conditions.*

The Housing Act, 1949 (Registration of Conditions) Rules, 1951, S.I. 1951, No. 185, lay it down how entries are to be made on the register of local land charges pursuant to s. 23 (5) of the Housing Act, 1949, but there is doubt about the time when such conditions should be registered, *i.e.*:

1. at the date of the resolution approving the improvement grant;
2. the date of acceptance of the improvement grant by the grantee;
3. the date when the actual money is paid to the grantee.

The Acts cited do not appear to give any guidance as to when the actual charge arises, and there appears to be no authority on this question. Do you consider the charge should be registered at stage 1, 2, or 3 mentioned above?

A. QUERENT.

Answer.

The resolution does not of itself bind the applicant, for he may decide to do without the local authority's money. On the other hand, actual payment to him may be delayed. We consider, therefore, that stage 2 is the crucial stage, at which the entry on the register should be made.

4.—Music, etc., Licence—*Premises subject to restrictive covenants—Nuisance.*

A is applying to the justices for a singing, dancing, and music licence to be renewed, for a ballroom of long standing. Objectors propose to raise questions on restrictive covenants on the title, and nuisance. They are local residents. Is there authority for saying the justices cannot inquire into covenants on the title to the property? How far can the inquiries of the justices into alleged nuisance proceed?

N. GOUROCK.

Answer.

In our opinion, justices will do well to disregard questions relating to restrictive covenants on the title, and grant their licence without prejudice to the rights of persons entitled to the benefit of the covenants: these rights may be enforced by appropriate action in a court of competent jurisdiction at the suit of persons entitled to the benefit of the covenants. We can give no exact authority for this view; but even if the objectors are such persons as aforesaid (which does not appear on the face of the query) we think that justices may be influenced by the cases mentioned in the paragraph "Ouster of Jurisdiction" in *Stone*, 87th edn., at p. 246.

We think that justices should be informed of the nature and extent of the alleged nuisance. It may be found possible to abate or to minimize the nuisance by attaching conditions to the licence under s. 51 (2) of the Public Health Acts Amendment Act, 1890.

5.—Probation—*Breach of requirement—Breach consisting of offences not the subject of prosecution.*

A boy now aged 12 years was placed on probation for a period of two years. During the course of his interviews with the probation officer he has admitted to her that he has stolen money from his own home and a neighbour. The matters have not been reported to the police by the losers, and no proceedings have been taken against the boy for these offences. The probation officer wishes to bring the boy before the juvenile court for a beach of the probation order upon the offences to which he has confessed to her.

I take the view that the proper course to adopt if it is desired to pursue the matter is for these offences to be reported to the police so that, if they think fit, they may take proceedings against the boy for these felonies, and that they must be proved according to law before they can be treated as breaches of the probation order. The probation officer is extremely reluctant to report the matter to the police, since she feels this would be a breach of the confidential relationship between her and the probationer. On the other hand it is felt that in the interests of the boy some action should be taken.

Will you please say whether the matter can properly be dealt with in the manner suggested by the probation officer?

T. JEL.

Answer.

The question of the duty of the probation officer and that of the child as to reporting the offences is perhaps more moral than legal. Some probation officers might think it necessary to try to persuade the child to confess the thefts to those he had robbed so that those persons could decide whether or not to prosecute. We appreciate the feeling of the probation officer that she might damage the relationship with a probationer if she informed against him, and we cannot say she has a legal duty to do so.

It is to be noted that s. 6 (3) of the Criminal Justice Act provides that a conviction is not to be treated as ground for dealing with a probationer in respect of a breach of requirement, but it does not say that an offence cannot in any circumstances be treated as a breach. It is sometimes argued that where there is no prosecution for an offence and therefore no question of proceeding under s. 8 evidence of offences may be used as proving a breach of a requirement to lead an honest life, or to be of good behaviour. We see no real objection to this in such a case as the one we are considering, always provided that the child has quite voluntarily and unreservedly admitted the offences. If there is any doubt about this, we agree that he is entitled to have the matter dealt with upon definite charges preferred

and tried by the court. As the probation officer thinks it desirable that the child should be brought back to court, it seems that his conduct may have been generally unsatisfactory, and that the offences are not the whole story of his failure to comply with the requirements of the order.

It is difficult to advise upon such a question, when so much can be said in support of either point of view, but we have suggested what we believe to be a practical and not unlawful method of meeting the case.

6.—Real Property—*Devise to two persons—Assent in favour of one only.*

A died in 1955 having by her will appointed B and C executors thereof. The will was proved by B, power being reserved to C. A gave her dwelling-house which comprises practically the whole of the estate to be divided equally between B and C. They have agreed that B should purchase C's share in the dwelling-house at any agreed figure. What do you consider the best method to effect such transfer?

Could B as personal representative merely assent to the vesting in himself of the property, and pay the agreed amount to C, or should B assent to the vesting of the property in himself and C, and then C transfer his interest to B? BEETOR.

Answer.

We think the assent must be to the vesting in B and C: *see Kemp* v. *Inland Revenue Commissioners* [1905] 1 K.B. 581; *Re West, West* v. *Roberts* [1909] 2 Ch. 180, *per* Swinfen Eady, J., for the previous law of assents, now embodied in s. 36 (2) of the Administration of Estates Act, 1925, and *cp.*, although the circumstances were not quite the same, *Re Duce and Boots Contract* [1937] 3 All E.R. 788. There can then be a separate transfer of C's interest to B. If B assented merely in his own favour, we think that a subsequent sale by her or her executors might give rise to difficulties, as in the case last cited.

7.—Road Traffic Acts—*Vehicles (Excise) Act*, 1949—*Lorry and driver hired by trailer owner to tow trailer—Necessary extra duty not paid—Liability of vehicle owner and of hirer for this and for defects in the vehicle.*

I was interested in P.P. 6 at p. 79, *ante*. I am wondering whether consideration was given to the definition of " owner " in s. 121, Road Traffic Act, 1930, and if not whether you consider this affects the position. JELLS.

Answer.

We do not think that the definition of " owner " in s. 121 of the 1930 Act is relevant to the P.P. in question. In our view the transaction between the vehicle owner and the trailer owner is not such as to constitute either a hiring agreement or a hire-purchase agreement within the meaning of that definition.

8.—Small Dwellings Acquisition Acts—*Mortgage of freehold reversion —Subsequent mortgage of leasehold.*

A bought from B two freehold maisonettes, the whole forming one property, with the aid of an advance under s. 4 of the Housing Act, 1949. The advance was to be secured on both premises, the council consenting to the granting of a lease of one of the maisonettes. The lease was to be subsequent to the mortgage, but in fact it preceded the dating of the mortgage by one day. It now appears that A granted this lease to B and that, so far as this particular maisonette is concerned, the council's security is a mortgage of the freehold reversion only. B now wishes to assign his leasehold interest to C, who has applied for an advance from the council under the Small Dwellings Acquisition Act, 1899. There is some doubt whether in the first place an advance should have been given on the part security of a freehold reversion, and, so far as an advance to C is concerned, there appear to be in effect two mortgages by the council on the same property, if not strictly on the same legal interest. Your opinion is sought as to whether the mortgage of the freehold reversion was within the powers of s. 4 of the Act of 1949, and whether the proposed advance is permissible under the Small Dwellings Acquisition Act. Practically the whole of the term of 99 years of the original lease remains unexpired. ARBERS.

Answer.

We see nothing against the legality of the advance to A. We understand that the leasehold now to be acquired by C is for close on 99 years; it is therefore " ownership " by definition, and the advance is within the Act of 1899. Whether it is prudent seems to depend upon the values of the interests of A and C; those interests are in law separate marketable entities.

9.—Town and Country Planning—*Enforcement notice—Time of taking effect not specified.*

The defendant was charged with using land in contravention of an enforcement notice, contrary to s. 24 of the Town and Country Planning Act, 1947. Both defending and prosecuting solicitors agreed that following the decision in *Perrins* v. *Perrins* [1951] 1 All E.R. 1075; 115 J.P. 346, the defence could not challenge the validity of the notice on the facts, and it was also agreed that the defendant was entitled to an aquittal if the defence could establish that the enforcement notice was defective in its drafting. Reference was made to s. 23, Town and Country Planning Act, 1947, as to the contents of the enforcement notice, and the cases of *Burgess* v. *Jarvis and Sevenoaks R.D.C.* [1952] 1 All E.R. 592; 116 J.P. 161; *Mead* v. *Plumtree* [1952] 2 All E.R. 723; 116 J.P. 589, and *Godstone R.D.C.* v. *Brazil* [1953] 2 All E.R. 765; 117 J.P. 452. The defence submitted that the enforcement notice was defective in that it did not specify the date on which it took effect, as required by s. 23 (3). The defending solicitor pointed out that the only reference to the date was contained in the second recital, and that that particular recital contained the words " the notice hereunder " which pre-supposed that the recital itself was not an operative part of the document. The operative part of the document notified the defendant of the time within which the work was to be carried out, which begged the question why it did not give him definite notice of the date when the notice took effect. A second point taken by the defence was that, assuming the recital was to be read as part of the notice, it was nothing more than notification of a council's resolution, and that it did not definitely inform the defendant when the notice was to take effect. He referred to the words used by Parker, J., in the case of *Godstone R.D.C.* v. *Brazil, supra*, and maintained that the words of the section had to be strictly construed. The prosecution's case was that the document construed as a whole gave the defendant adequate notice of the date of taking effect of the notice, and the period within which the work had to be carried out. A copy of the enforcement notice is enclosed, and I shall be glad to have your views on its validity having regard to the above.

ANGLO.

Answer.

It could be argued that the cases mentioned were distinguishable, because the notice here did tell the recipient what was the time at which the council had resolved that it should take effect. But an ordinary reader would hardly understand, taking the document as a whole, that two periods of 28 days each were to elapse before he need finish the work. In other words, the council failed to " set out clearly " the two periods, to quote from what Parker, J., said at p. 454 of our report of *Godstone R.D.C.* v. *Brazil, supra*. In our opinion it is not safe to proceed upon the notice.

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